

REMARKS

Reconsideration of the present application is respectfully requested in view of the above amendments and the following remarks. Claims 1-7 and 9-20 are pending and currently under examination. Applicants kindly thank the Examiner for recognizing the allowability of claims 1-4, 14-15, and 19-20, suggesting the manner in which claims 5-7, 9-13, and 16-18 would be considered allowable, and accepting the corrected drawing for Figure 2.

Without acquiescence or prejudice, claims 5 and 10 are amended to particularly point out and distinctly claim certain embodiments of Applicants' invention, and claim 11 is canceled. No new matter has been added by the amendments, support for which can be found in the claims and specification as originally filed.

REJECTION UNDER 35 U.S.C. § 112, SECOND PARAGRAPH, INDEFINITENESS

Claims 5-7, 9-10, 12-13, and 16-18 stand rejected under 35 U.S.C. § 112, second paragraph, for alleged indefiniteness. The Examiner asserts that claim 5 is indefinite because it is drawn to a cell, yet does not define the cell as residing within the *Saccharum* plant of that claim.

Applicants traverse this rejection. Nonetheless, as suggested by the Examiner, amended claim 5 relates, in pertinent part, to a genetically modified *Saccharum* sp. cell, wherein a [the] *Saccharum* plant comprising said cell accumulates PHA at about 1.6% of leaf dry-weight. In this regard, claim 5 defines the cell as residing within a *Saccharum* plant.

Applicants believe that this amendment obviates the indefiniteness rejection under 35 U.S.C. § 112, second paragraph, and respectfully request withdrawal of the same.

REJECTION UNDER 35 U.S.C. § 101

Claim 10 stands rejected under 35 U.S.C. § 101 for allegedly encompassing non-statutory subject matter. The Examiner asserts that claim 10 encompasses products of nature, such as *untransformed* plant propagating material and seeds.

Applicants traverse this rejection. Nonetheless, as suggested by the Examiner, amended claim 10 relates to genetically modified seeds or other reproductive material, or genetically modified propagation material from the plant of Claim 9. Since the seeds, reproductive materials, and propagation materials of claim 10 are all “genetically modified,” Applicants submit that this claim is directed to statutory subject matter.

Accordingly, Applicants submit that claim 10 satisfies the requirements under 35 U.S.C. § 101, and respectfully request withdrawal of this rejection.

REJECTION UNDER 35 U.S.C. § 102

Claims 10 and 11 stand rejected under 35 U.S.C. § 102(b) for alleged lack of novelty over Asrar et al. (U.S. Patent No. 6,091,002). The Examiner asserts that claim 10 reads on the untransformed plant material of Asrar et al., and alleges that the PHA of claim 11 does not differ from the PHA of this reference.

Applicants traverse this rejection. Nonetheless, without acquiescence or prejudice, claim 11 is canceled, rendering moot the rejection of that claim. Also, as noted above, amended claim 10 relates to “genetically modified” plant material, which is not taught by Asrar et al. Asrar et al. therefore fail to anticipate claim 10.

Applicants submit that claim 10 satisfies the requirements of novelty over Asrar et al., and respectfully request withdrawal of this rejection under 35 U.S.C. § 102(b).

Applicants believe that all of the claims in the application are allowable. Favorable consideration and a Notice of Allowance are earnestly solicited. If any issues remain, the Examiner is kindly requested to contact the Applicants’ undersigned representative.

Application No. 10/520,882
Reply to Office Action dated October 6, 2009

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Respectfully submitted,
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